

206

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP-1730-2017 (O&M)
DATE OF DECISION: 18.09.2019

Dr. IQBAL SINGH

...PETITIONER

VERSUS

VIKAS PARTAP AND ANR

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashok Sharma Nabhewala, Advocate
for the petitioner.

Ms. Sudeepti Sharma, Addl. AG, Punjab.

AVNEESH JHINGAN, J. (Oral)

In concise facts are that the petitioner was appointed as Lecturer in the Government Medical College, Patiala on 14.11.2006. He is M.D. (Physiology). The reliance is placed on the notifications dated 21.08.1991 and 22.05.2003 whereby there was re-designation of the posts of Lecturers, Senior lecturers, Assistant Professor and Associate Professor. The claim of the petitioner was that while appointing, nomenclature of the post was wrongly given as 'Lecturer' instead of 'Assistant Professor'. There is no dispute that no challenge was made by the petitioner to the said nomenclature used in the appointment letter. It is further the case of the petitioner that after having gained three years of experience, he was to be promoted automatically as Associate Professor and same was not done. He

was given promotion as Assistant Professor only on 31.12.2014.

The respondents gave advertisement for the post of Associate Professor on 14.07.2013, aggrieved of the said advertisement the petitioner filed CWP No. 26429 of 2013. The challenge in the writ petition was to the advertisement and public notice dated 17.07.2013, uploaded on the website of the Department for filling one post of Associate Professor in the Department of Physiology by direct recruitment.

It would be important to reproduce prayers made in the writ petition:-

- “(i) *Issuance of a writ of Certiorari quashing advertisement (Annexures P-9 and P-10).*
- ii) *Issuance of interim directions staying the filling up of the post of Associate Professor by way of direct recruitment during the pendency of the writ petition as the interview is fixed for 01.12.2013.*
- (iii) *That the filing of certified/typed copies of the annexures may kindly be exempted.*
- (iv) *That the filing of advance notices to the respondents may kindly be dispensed with.*
- (v) *Any other order.”*

The petitioner succeeded in the writ petition and vide order dated 25.04.2017, the advertisement was set aside. The respondents filed review application i.e RA-CW-452-2017, but in the meanwhile, the present contempt petition was filed. Since the review application was filed by the respondents, the contempt petition was adjourned *sine die*. The review application was dismissed on 03.05.2019. While dismissing the review application, it was observed that petitioner has to be considered on the basis

of his merit. The relevant portion of the order is quoted below:-

“The question regarding entitlement of the petitioner herein is not questioned before this Court nor argued. Therefore, he has to be considered on the basis of his merit.

In view of the above, there is no ground to review the order dated 25.04.2017 passed by this Court. Finding no merit in this review application, the same is dismissed.”

The present contempt petition is filed claiming that the respondents have not granted the benefit of promotion to the petitioner as Associate Professor as per order dated 25.04.2017.

It would be pertinent to note here that in the meantime, the respondents issued fresh advertisement dated 25.02.2019. The petitioner filed an application in present contempt petition for placing the advertisement on record.

The contention of the learned counsel for the petitioner that there is violation of the order of this Court by not granting promotion as Associate Professor is not well founded.

From the perusal of the prayers of the writ petition and the order passed on 25.04.2017, it is evident that the challenge was only to advertisement being not in consonance with the rules. The case made out was that the post of Associate Professor was to be filled by way of promotion only and not by direct recruitment. The said stand was accepted, the advertisement was quashed. Neither there was any issue raised nor decided by the Court with regard to the fact that the petitioner was initially given wrong nomenclature as Lecturer instead of Assistant Professor. There was no direction that the benefit of promotion as Associate Professor be granted to the petitioner. Rather while dismissing the review application, it

neither a question before the Court nor argued.

The Supreme Court in ***Er. K. Arumugam Vs. V. Balakrishnan & Ors.*** 2019 AIR(SC) 818 held as under:-

*"17. In the contempt jurisdiction, the court has to confine itself to the four corners of the order alleged to have been disobeyed. Observing that in the contempt jurisdiction, the court cannot travel beyond the four corners of the order which is alleged to have been floated, in **Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others v. M. George Ravishekaran and others** 2014(2) S.C.T. 163 : (2014) 3 SCC 373, speaking for the Bench, Justice Ranjan Gogoi held as under:-*

"19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities

*be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, **Jhareswar Prasad Paul v. Tarak Nath Ganguly 2002(2) R.C.R. (Criminal) 835 : (2002) 5 SCC 352, V.M. Manohar Prasad v. N. Ratnam Raju (2004) 13 SCC 610, Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami 2008(3) R.C.R.(Civil) 177 : (2008) 5 SCC 339 and Union of India v. Subedar Devassy PV 2006(1) R.C.R. (Criminal) 702 : (2006) 1 SCC 613.**"*

.....(emphasis supplied)

In the contempt proceedings, the onus is on the petitioner to establish wilful disobedience. The respondent cannot be held guilty on surmises and conjunctures. While exercising the jurisdiction of contempt, the Court has to restrict within the four corners of the order passed. It is not the scope of the contempt to enlarge or to re-write the order.

It would be appropriate to deal with issue raised with regard to the advertisement dated 25.02.2019 and reliance placed on interim order dated 11.04.2019 issuing notice in application of placing of advertisement on record.

The issuance of advertisement is a fresh cause of action for the petitioner, if aggrieved of the advertisement, he can avail remedies in

accordance with law. It would be pertinent to mention here that no challenge has been posed by petitioner till date. This Court has been apprised that the petitioner has applied in pursuance to advertisement. The learned counsel for petitioner has not denied with the said fact.

No case is made out for wilful disobedience of directions of this Court. The contempt petition is dismissed, with costs of Rs.10,000/- payable by the petitioner to the Poor Patients Welfare Fund of PGIMER, Chandigarh. The Registry shall ensure the recovery of the costs.

Rule issued against respondents is discharged.

18th September, 2019
shabha

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*